

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number: EB-03-NY-380
)	
Moises Cabrera)	NAL/Acct. No: 200632380002
Juan Cabrera)	
)	FRN: 0013 3361 10
New York, NY)	
)	

FORFEITURE ORDER

Adopted: September 28, 2006

Released: September 29, 2006

By the Regional Director, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Moises Cabrera and Juan Cabrera (jointly referred to herein as “the Cabrerass”) for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“*Act*”),¹ by operating an unlicensed radio transmitter on the frequency 89.7 MHz in New York, NY.

II. BACKGROUND

2. On December 19, 2005, the New York Office issued a Notice of Apparent Liability for Forfeiture to the Cabrerass for apparent willful and repeated violation of Section 301 of the *Act*.² The Cabrerass filed a response to the *NAL* on January 17, 2006, requesting cancellation of the proposed forfeiture based on their inability to pay and the fact that they have ceased operating the station.³ They do not otherwise dispute the findings in the *NAL*.

III. DISCUSSION

3. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“*Act*”),⁴ Section 1.80 of the Rules,⁵ and the

¹ 47 U.S.C. § 301.

² *Moises Cabrera and Juan Cabrera*, Notice of Apparent Liability for Forfeiture, NAL/Acct. No. 200632380002 (Enf. Bur., New York Office, December 19, 2005) (“*NAL*”).

³ The response to the *NAL* was submitted by Moises Cabrera, but we will treat it as a response on behalf of Juan Cabrera as well.

⁴ 47 U.S.C. § 503(b).

*Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines.*⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.⁷

4. We decline to cancel the forfeiture based on the Cabrerias claim that they no longer operate a broadcast station. The Commission consistently has held that corrective action taken to come into compliance with the Rules and the Act is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸

5. We also decline to cancel the forfeiture based on an inability to pay. The *NAL* specifically stated that “[t]he Commission will not consider reducing or cancelling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.”⁹ Moises Cabrera only submitted a tax return from 2004, which is signed, but not dated. The response also indicated that Juan Cabrera is unemployed, but no documentation was submitted in support of that statement. We therefore conclude that the Cabrerias have not submitted sufficient documentation in support of their request for a cancellation of the proposed forfeiture.

6. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Moises Cabrera and Juan Cabrera willfully and repeatedly violated Section 301 of the Act. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed \$10,000 forfeiture is warranted.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended,¹⁰ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ that Moises Cabrera and Juan Cabrera are **JOINTLY LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Act.

8. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) days of the release of this *Order*. If the forfeiture is not paid within the period specified, that case may be referred to the Department of Justice for collection pursuant to Section 504(a)

(...continued from previous page)

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

⁹ See *NAL* at para. 17.

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

of the Act.¹² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹³

9. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Moises Cabrera and Juan Cabrera at their address of record.

FEDERAL COMMUNICATIONS COMMISSION

Russell Monie, Jr.
Regional Director, Northeast Region
Enforcement Bureau

¹² 47 U. S. C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.